

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
*JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

August 23, 2010

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**RE:   Marian A. Chandler v. Pinnacle Foods**  
**C.A. No. S09A-07-002-ESB**  
**Letter Opinion**

Date Submitted: June 14, 2010

Dear Counsel:

This is my decision on Marian A. Chandler's Application for Attorneys' Fees in this workers' compensation case. Chandler was employed by Pinnacle Foods in its pickle processing plant for 33 years. She filed a Petition for Compensation Due, arguing that she injured her back at work. The Industrial Accident Board ruled that Chandler's claim was barred by the statute of limitations. I reversed the Board's decision.<sup>1</sup> Pinnacle filed an interlocutory appeal of my decision with the Supreme Court, but the Supreme Court declined to hear it. Chandler now seeks attorneys' fees of \$6,630.00. Her request is opposed by Pinnacle. Pinnacle argues that Chandler's application for attorneys' fees is premature. An award of attorneys' fees is governed by 19 Del.C. § 2350(f), which

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<sup>1</sup> *Chandler v. Pinnacle*, 2010 WL 1138869 (Del. Super. March 22, 2010).

states:

The Superior Court may at its discretion allow a reasonable fee to claimant's attorney for services on an appeal from the Board to the Superior Court and an appeal from the Superior Court to the Supreme Court where the claimant's position in the hearing before the Board is affirmed on appeal. Such fee shall be taxed in the costs and become part of the final judgment in the cause and may be recovered against the employer and the employer's insurance carrier as provided in this sub-chapter.

Thus, the Court may, in its discretion, award attorneys' fees where the claimant's position before the Board is affirmed on appeal.<sup>2</sup> Chandler argued before the Board that her claim was not barred by the statute of limitations. The Board disagreed and ruled that it was. I agreed with Chandler's position before the Board and reversed the Board's decision. However, given the posture of this case, it remains to be seen whether Chandler will actually be awarded anything by the Board on her claim for benefits. Given this, I have concluded that Chandler's application for attorneys' fees is premature at this time.<sup>3</sup> However, I will reconsider it, if appropriate, after the Board issues a decision on the merits of Chandler's claim for benefits.

**IT IS SO ORDERED.**

Very truly yours,

/s/ E. Scott Bradley

E. Scott Bradley

Original to Prothonotary

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<sup>2</sup> *Murtha v. Continental Opticians, Inc.*, 729 A.2d 312, 315 (Del. Super. 1997).

<sup>3</sup> *Thomason v. Temp Control*, 2002 WL 1587856 (Del. Super. June 20, 2002).